# Office of Chief Counsel Internal Revenue Service

# memorandum

CC:LM:RFP:CHI:1:TL-N-2213-01

RAVillageliu

date: April 3, 2001

to: David Oyler, LMSB Group 1531,

860 East Algonquin Road, Schaumburg, IL 60173

Attn.: Irwin Shudnow, Team Coordinator via Facsimile Transmission

from: ROGELIO A. VILLAGELIU

Special Litigation Assistant

subject: AO: AO: group.

Extension of Statute of Limitations for consolidated return group

Form: 1120 Year:

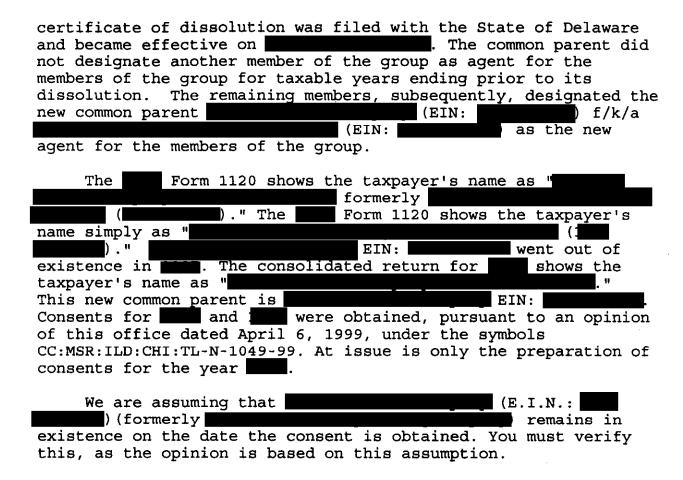
This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views. Our view is that disclosure of this particular opinion to the taxpayer, for purposes of obtaining a consent, is appropriate.

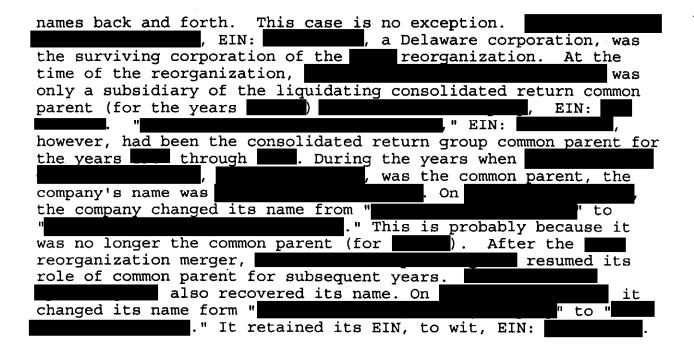
This Chief Counsel Advice responds to Team Coordinator Irwin Shudnow's oral request for assistance of April 3, 2001. This memorandum should not be cited as precedent.

#### FACTS

The Service wants to extend the statute for the
consolidated return group's U.S. Corporation Income Tax
for the group's taxable years land. In and and the
consolidated return group was headed by
(formerly known as
, a Delaware c <u>orporation</u> . On l
, EIN: reorganized, pursuant to a plan
of reorganization allegedly qualifying under I.R.C. Section
368(a)(1)(C) or (D). Pursuant to the plan of reorganization and
under Delaware law, the consolidated group common parent,
, EIN:, liquidated. The common parent's

<sup>&</sup>lt;sup>1</sup>As it is usual in reorganizations involving multicorporate groups, the parties add to the reigning confusion by trading





## ISSUE

1. Who is the proper party to execute Form 872 for the consolidated group for the tax year ?

Answer: The return for the year was signed by the common parent for the group's year, year, Assuming that it remains in existence, this is the entity that should sign the Form 872, consent.

2. Provide the language for the Form 872

Answer: On the front of the Form 872, on the line designated taxpayer, you may type the name of the consolidated group exactly as it appears on the consolidated return for the year that the which the consent is being signed. Mr. Shudnow reports that the return reads 'the shudnow reports the shudnow reports the return reads 'the shudnow reports the shudnow reports the shudnow reports the shudnow reports the sh

On the second page of the Form 872, just under the signature line, type the name of the individual authorized to execute the Form 872, his/her title, and the name of the corporation for which s/he is signing (the corporation of which he is a current officer).

In this case, a good way of doing it would be:

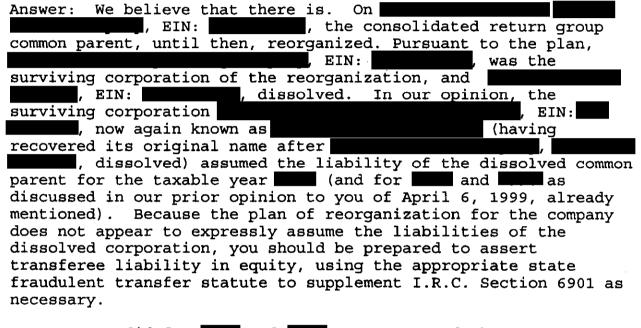
NAME OF THE PERSON
TITLE

, for itself,
and as agent for the consolidated
group.

However, the consent would still be legally valid, even, if it were missing some of the above information, as long as the signature was valid and properly authorized. I.R.C. §6062 provides, generally, that a corporation's income tax returns must be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act. An individual's name signed on the return is prima facie evidence that the individual is authorized to sign

the return. Accordingly, any such officer may sign a consent, whether or not that person was the same individual who signed the return. Rev. Rul. 83-1 C.B. 349. We recommend that you verify that the person signing for the corporation is authorized to sign, and that you use all of the language set forth in the example above, in this particular case.

3. Is there transferee liability in this case for the consolidated return group tax liability?



As you did for and and, we recommend that you request (E.I.N.: to execute the Form 977, Consent to Extend the Time to Assess Liability At Law or Equity for Income, Gift and Estate Tax Against a Transferee or Fiduciary, and the Form 2045, Transferee Agreement, as a precaution in this situation.

4. How do you preserve the statute of limitations for transferee liability?

5. What names should you use in the Forms 2045 and 977?

To preserve the statute of limitations for transferee liability, Forms 2045 (Transferee Agreement) and 977 (Consent to Extend the Time to Assess Liability at Law or Equity for Income, Gift, and Estate Tax Against a Transferee or Fiduciary) should be executed by (EIN: (EIN: ). List the transferor's name in the Forms 2045 and 977, as follows:
"EIN: EIN:
Similarly, list the transferee's name in the Forms 2045 and 977, as follows:
" (EIN:, formerly known as, (EIN:, EIN:)."
You will note that this is the first time that we include the former name of
LEGAL OPINION AND DISCUSSION
The common parent for was (EIN:  ). Assuming that you verify that it remains in existence, said company is the agent of the group for the year  It is the company that signs the Form 872. See Treas. Reg. Section 1.1502-77(a) and Craigie, Inc. v. Commissioner, 84 T.C. 466 (1985).
(E.I.N.: ) had been the common parent of the consolidated group before its dissolution. However, after it transferred substantially all of its assets into its subsidiary (E.I.N.: ), (E.I.N.: (E.I.N.: )
became the new common parent of the group. The group continued to exist under Treas. Reg. § 1.1502-75(d)(2). Under Treas. Reg. § 1.1502-75(d)(2) the group shall be considered as remaining in existence notwithstanding that the common parent is no longer in existence if the members of the affiliated group succeed to and become the owners of substantially all the assets of such former parent and there remains one or more chains of includible corporations connected through stock ownership with a common parent corporation which is a includible corporation and which was a member of the group prior to the date such former parent ceases to exist.

(E.I.N.:

and the

other members of the affiliated group succeeded to and become
owners of substantially all of the assets of
(E.I.N. pursuant to a plan of reorganization
under either I.R.C. § 368(a) (1) (C) or (D).
(E.I.N.: was the new common parent
of the consolidated group after the dissolution.
Prior to the end of the year (EIN; )
had already disappeared. The return was filed by
(EIN: as the new common parent.
Transferee Liability
Himaller was about a consider numberships the two-sfewer
Finally, you should consider protecting the transferee liability statute of limitations. On
, EIN: reorganized. Pursuant to the
plan, EIN: EIN: Formerly Films
was the surviving corporation. The
taxpayer reported the transaction as qualifying as a
reorganization under either I.R.C. Section 368(a)(1)(C) or (D).
Under the plan, inter alia, voting common stock of
, was issued to in
exchange for all of the assets of
shares were then distributed to all of the shareholders of
. In our opinion, [f/k/a
assumed s
liabilities, some of them expressly, and the rest under state
general corporation law principles because of having received its
transferor's assets and being the survivor of the merger.
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## CONCLUSION

This opinion is being sent to you by facsimile transmission, per your request, and by regular mail. The legal file with respect to the particular legal questions covered in this opinion is now closed in this office. If you have further questions, please contact the undersigned at (312) 8867-9225, ext. 308.

STEVEN R. GUEST Associate Area Counsel (Large and Mid-Size Business)

By:				
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